

Appendix 4

OSHA's Proposed Rule Will Have a
Devastating Economic Impact on
Hospitality Industries

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Restaurants, SIC 5812

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- Smoking bans will cause hotels, restaurants and bars to lose business. The people who will be the most affected are those who can least afford it. The hospitality industry is one of the leaders in entry level jobs and in the hiring of minorities. A federal smoking ban would put these people out of jobs. [Robert "Bob" Jacobs, San Francisco Hotel Association, October 24, 1994, Tr. p. 3,731].

- In 1993, a proposed bill went into effect in Vermont which provides smoking is not allowed in most public places. Vermont's hospitality industry provides much revenue for Vermont in taxes. Vermont's smoking ban in public places will hurt the hospitality industry due to the international markets Vermont competes with. I know of three restaurants in three different cities in Vermont which instituted smoking bans. Each restaurant lost from 19% up to 32% of its business. [William Gillam, Jr., Vermont Business Coalition, January 20, 1995, Tr. p. 12,371; 13,384-13,385].
- My profit margin is very low, like most other restaurateurs. I cannot afford to make changes. Changes could force me out of business. I have a small government loan from the Small Business Administration, and do not want to default on the loan. [Eddy Giel, University Place Restaurant, October 24, 1994, Tr. p. 3,545, 3,550].
- If I ban smoking in my restaurant, most of my 45 employees would lose their jobs. [Eddy Giel, University Place Restaurant, October 24, 1994, Tr. p. 3,546].
- The rule would probably result in a 10-20% loss in business. [Paul R. Wall, Philips Seafood, November 15, 1994, Tr. pp. 6,077-6,078].
- The customer would have to act like a self-service station and go to an area or non-smoking or a total ban. This would be most devastating to me and to all restaurants and taverns in Baltimore County and the state. I don't see how a robot waiter or waitress could actually substitute for personal help. It's just impossible, it's unreal, it's unheard of. It's the personal touch in the restaurant business. It's important to have your floor cleaned and you have to have this done. You also have to have the attendants. The person waiting on you has to be attentive. If you don't have any of that, that's when they call me. So, you have to have that and a robot is no answer for anything like that, that's outrageous. [Peter Karangelen, Kent Lounge, February 3, 1995, Tr. p. 13,321; 13,329].
- Smoking bans in restaurants cause decreases in revenue to the restaurants. Smoking bans in restaurants cause customers to stay at home or not stay as long at the restaurants when eating out. [Bob Jacobs, San Francisco Hotel Association, October 24, 1994, Tr. p. 3,730].

- One of my customers informed me that if the proposed smoking regulation were implemented he would not continue to patronize the establishment. More people would start bringing their lunch or eating in the cafeteria rather than going to restaurants where smoking is banned. [Bradley Adams, Subway Sandwich Shop, February 1, 1995, Tr. p. 13,132]
- OSHA's proposed rule essentially would prohibit smoking in bars and restaurants. As a practical matter, bars and restaurants could not set up separately ventilated enclosures that would protect workers from ETS exposure. [Margaret Seminario and Rex Tingle, Department of Occupational Safety and Health for the AFL-CIO, January 20, 1995, Tr. p. 12,292].
- Most of my family and numerous friends have stated, as well as myself, that they refuse to use a restaurant that will not accommodate smoking sections." [Donna Thompson, Employment Research Services, November 1, 1994, Tr. p. 4,787].
- Most restaurants are small or independent operations which do not have the luxury of paying people to post notices, fill out forms, appoint air quality officers, or do much of anything which does not bring customers in the door. [W. W. Naylor, owns Naylor Restaurant, October 24, 1994, Tr. p. 3,634].
- Passage of OSHA's proposed rule would not "level the playing field" for restaurants. Restaurants are in different economic situations, and the rule thus would affect them differently. Some restaurants are more profitable than others. Some restaurants are hanging on by their fingernails, economically speaking. [William Fisher, W. W. Naylor, and James Britt; National Restaurant Association, October 24, 1994, Tr. p. 3,727].
- If a restaurant positioned a smoking section near the kitchen where there is a high amount of exhaust, that in effect would negatively pressurize that part of the restaurant. [William P. Fisher, W. W. Naylor and James Britt, National Restaurant Association, October 24, 1994, Tr. p. 3,701-3,702].
- I owned a coffee shop in Beverly Hills. Beverly Hills banned smoking. When Beverly Hills banned smoking, the coffee shop experienced a 30% decline in sales. The business never returned I had to close the business, causing my employees to lose their jobs. [W.W. Naylor, owner, Naylor Restaurant, October 24, 1994, Tr. P. 3,639].
- If smoking is banned in restaurants, customers will make fewer visits and will have shorter stays in the restaurants. This

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would result in lower sales for the total food service industry. [William Fisher, Executive Vice President of the National Restaurant Association, October 24, 1994, Tr. p.3,644-3,645].

- A smoking ban in the restaurant would cause customers to make their restaurant stays shorter. That could result in reduced space to restaurants. For example, the landlord may have to reduce the restaurant's rent. [William Fisher, W. W. Naylor, and James Britt; National Restaurant Association, October 24, 1994, Tr. p.3,712].
- Restaurants are not the only competitors other restaurants have. Grocery stores compete with restaurants also. If people are not allowed to smoke when they go to a restaurant, some will stay at home to eat where they can smoke. ... If smoking is banned in restaurants, customers will make fewer visits and will have shorter stays in the restaurants. This would result in lower sales for the total food service industry. Smoking bans in restaurants would decrease sales by about 6.5% [Fisher, Naylor, Britt, National Restaurant Association, October 24, 1994, Tr. p. 3,639, 3,644-3,645, 3,674-3,675].

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Appendix 4-B

Taverns, SIC 5813

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Testimony

- The customer would have to act like a self-service station and go to an area or non-smoking or a total ban. This would be most devastating to me and to all restaurants and taverns in Baltimore County and the state. [Peter Karangelen, Kent Lounge, February 3, 1995, Tr. p. 13,321].
- In the event smoking were banned, in my opinion, my customers are faithful and they would come in there and have a drink or maybe two and leave. They wouldn't stay there. They wouldn't talk with people. They wouldn't stay and watch the ball game. They wouldn't meet anybody there. The judge or the attorney wouldn't come in there. They wouldn't meet there. They'd go someplace else and meet. It would be a detriment to my business. I really believe that sincerely. [Peter Karangelen, Kent Lounge, February 3, 1995, Tr. pp. 13,335-13,336].
- OSHA's proposed rule essentially would prohibit smoking in bars and restaurants. As a practical matter, bars and restaurants could not set up separately ventilated enclosures that would protect workers from ETS exposure. [Margaret Seminario and Rex Tingle, Department of Occupational Safety and Health for the AFL-CIO, January 20, 1995, Tr. p. 12,292].

- The Indoor Air Quality Rule would make it hard to offer our facility to the public for a fun place type entertainment or recreational area. The Rule would threaten our active membership and the livelihood of our employees who smoke since these employees are not forced to work with the VFW. [Jim Naughton, VFW, November 1, 1994, Tr. p. 4,708].
- At any veterans meeting, regardless of whether it is an annual coalition breakfast or a veterans of foreign wars, many of the men are smoking. A smoking ban would have a detrimental effect on the camaraderie within the organization if they were unable to make arrangements for these men to smoke. [J. Thomas JanBurch, VFW, 11/02/94, Tr. p. 4,878].

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Appendix 4-C

Casinos, SIC Codes 7011, 7993, and 7999

Literature

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Testimony

- Banning smoking in Cactus Jack's would result in a 20-30% loss of business. With the advent of interactive gaming, people can play blackjack or slot games in their living room and choose to stay home rather than frequent Cactus Jack's. The smoking regulation would very simply put me out of business. [Steve Browne, Owner, Cactus Jack's Casino, February 2, 1995, Tr. pp. 13,175; 13,189-13,190].
- We also have to make it work at the same time for international customers, who are approximately 15 percent of our market in the gaming industry. [Samuel McMullen and Amy Halley, McMullen Strategic Group, November 30, 1994, Tr. p. 7,888].
- One concern of casinos is how to react to a gambler betting a lot of money who wants to smoke when the casino resort has a smoking ban. For example, if someone is sitting at a \$500 black jack table betting a minimum of \$500 at each throw, and wants to light up a cigarette, neither the hotel nor the casino will want to be put in the position to prohibit the patron from smoking. [Wayne Edward Mehl, Nevada Resort Association, October 24, 1994, Tr. p. 3,580].

- Based on anecdotal evidence, casino operators who have voluntarily created nonsmoking areas have experienced declines in revenue. One member of the Nevada Resort Association reported that a nonsmoking area making up 19% of the casino floor space brought in only eight percent of the revenues, 50% less per square foot than was being made in the nonrestricted areas. [Wayne Edward Mehl, Nevada Resort Association, October 24, 1994, Tr. p. 3,560].
- As it is impractical for casinos to have designated smoking areas, casinos would have to ban smoking. A ban would result in significant revenue losses for casinos. Most casino patrons smoke. Nevada resort association members compete with foreign casinos and with other types of entertainment business (both indoor and outdoor) which may not be subject to a smoking ban. OSHA's ETS rule might not apply to casinos on Indian reservations. The point is that banning smoking in casinos would result in patrons going to competitors who do not have to comply with smoking bans. [Wayne Edward Mehl, Nevada Resort Association, October 24, 1994, Tr. p. 3,558-3,561, 3,591-3,592].
- OSHA's proposed rule is based on its assessment of the supposedly poor indoor air quality of office buildings and similar structures. Casino resorts, unlike office buildings, are places of entertainment which must provide a clean and hospitable environment for their patrons if they are to succeed. The popularity of casino resorts is strong evidence against the proposition that casinos suffer from poor indoor air quality. [Wayne Edward Mehl, Nevada Resort Association, October 24, 1994, Tr. p. 3,554-3,555, 3,563].
- Almost all major casinos have no smoking areas. Five huge new hotel casinos have opened in the last three years which have great ventilation. It is not noticeable that anybody smokes in them because they are so well ventilated and taken care of. [Wayne Edward Mehl, Nevada Resort Association, October 24, 1994, Tr. p. 3,567-3,569].
- The proposed rule cannot be made applicable to parking facilities because the following factors have not been studied: (a) the type of facility, whether underground, ground level, above ground, (b) number of employees affected and number of hours employees are stationed in these affected areas, (c) the technological feasibility, costs, responsibility, whether it be owner or operator, safety of the users, the impact on the economy, the impact on federalism, the OMB cost benefit analysis and the impact of other

regulations. [David Ivey, Institutional and Municipal Parking Congress, December 14, 1994, Tr. P. 10,475].

- It is unclear when a home under construction would need to come into compliance with OSHA's proposed rule. A home under construction often is not even an enclosed space yet. At one point, it may just be a hole in the ground, then some lumber, and then the windows may not be in. In many cases, the HVAC system is not engaged until right before the owner takes over the house. [Regina Solomon, National Association of Home Builders, December 13, 1994, Tr. p. 8,834-8,835].
- Working in the facility is almost like being outside. The facility has "real high ceilings" and many of the doors are open. The tempering fans that are run when the furnaces are operating tend to suck out all the air, heat and air conditioned air so it is really like being outside. [Warren Wild, McBride's, Inc., February 10, 1995, Tr. p. 13,842].
- Due to our unique conditions, we do not have a problem with tobacco smoke in the manufacturing area. The employees do not work close together. We have high ceilings. There are huge fans all over the plant. The dock doors and most of the doors usually stay open. [Karen Christiansen, Synthetics International, Inc., February 24, 1995, Tr. p. 14,207-14,208].
- There does not seem to be a problem caused by smoking. The building has large ceilings, one branch has 15' ceilings. Large overhead dock-sized doors are open a majority of the time, even in the winter, and create very good ventilation. The working areas are open and free from smoke. [Todd Sargeant, Rocky Mountain Supply, Inc., February 24, 1995, Tr. p. 14,240].
- We simply do not have any problems caused by ETS due to the uniqueness of our building and our location in Oklahoma. The employees are allowed to smoke wherever they want. The building has about 10,000 sq. ft. of space and 20' ceilings. There are five overhead doors which are 14' in height and which are opened 6 to 12 times a day in both fair and inclement weather. It also is windy in Oklahoma City. [Linda Buggard, Broadway Machine, February 21, 1995, Tr. p. 13,931].
- The facility has very high ceilings, at least 22 ft., and in addition, there are loading docks doors which always remain open except on very cold mornings. There are also fans installed within the facility to circulate air. [Rick Lewis, Winter Bell Company, February 1, 1995, Tr. pp. 13,154-13,155].

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Appendix 4-D

Bingo Parlors, SIC 7999

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Testimony

- I have a non-smoking area in the bingo hall due to a Prince William County ordinance requiring such. However, this non-smoking area has become smaller and smaller since the majority of people, approximately 80 percent, who do play bingo are smokers. [John Dodge - VFW, November 1, 1994, Tr. p. 4,706].
- When nonsmoking bingo nights were attempted, the result was a dramatic decline in business. [Ron Seng, Michigan Licensed Beverage Association, October 26, 1994, Tr. p. 3,966].

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Appendix 4-E

Billiard Parlors, SIC 3949

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Testimony

- I would lose customers if I banned smoking. [Edward W. Gillis, Fast Eddy's Billiard Cafe, October 24, 1994, Tr. p. 3,619-3,620].
- Billiard rooms are a combination of bars, restaurants and playing areas for customers. Many customers consider the billiard rooms an extension of their own home. They look forward to drinking, eating, smoking and playing in a relaxed atmosphere. They certainly should have the freedom to choose whether or not their establishment of choice allows smoking. [Edward W. Gillis, Fast Eddy's Billiard Cafe, October 24, 1994, Tr. p. 3,603].
- The billiard room recently installed an expensive filtration system that satisfactorily cleans the air. The system uses electrostatic precipitation to remove up to 95% of the common airborne pollutants including ETS. The proposed OSHA rule on ETS, however, states no level of ETS is to be permitted. The point is that the billiard room already has taken steps to sufficiently eliminate any ETS problem, and the proposed rule is too restrictive. [Edward W. Gillis, Fast Eddy's Billiard Cafe, October 24, 1994, Tr. p. 3,603-3,604].

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Appendix 4-F

Bowling Alleys, SIC 3949

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Appendix 4-G

Travel Agencies, SIC 4724
Tour Groups, SIC 4725
Convention Bureaus, SIC 7389

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Testimony

- It would be very detrimental to tell a customer who is making travel arrangements that they cannot smoke. [Carmen Delayncera, Owner of travel agency, March 13, 1995, Tr. p. 15,079].
- The proposed standard would require me to prohibit smoking by my foreign customers and potential customers when they visit my facilities, and this would have a negative impact on my business. [Norman Dresser, Vice President of Dresco Belting Co., November 1, 1994, Tr. p. 4,762-4,764].
- I have a lot of foreign customers who come into the facility to examine certain equipment design. A majority of the foreign customers do in fact smoke and they would be truly insulted if told they couldn't smoke while conducting business in my facility. Foreign customers could go to other competitors in different countries that do not have such regulations. [A.T. VanEtten, Griffin & Company, January 31, 1995, Tr. p. 12,960].
- If the rule were implemented and customers were not allowed to smoke, many of the customers would use portable welders which come out to their place and perform work for them at their farms instead of at the Company's facility. Foreign customers would be very difficult to ask not to smoke at their establishment. [Jade Lammers, Mohrlange Manufacturing, February 1, 1995, Tr. p. 13,069].
- When the State of Washington's office smoking ban was enacted, some of my foreign customers refused to meet with me at my place of business because they wanted to meet at a location where smoking was permitted. [Diane Michalek, Aviation West, October 27, 1994, Tr. p. 4059].
- Foreign visitors to casinos would simply go to some other country if smoking were banned in U.S. Casinos. [Wayne E. Mehl, Nevada Resort Association, October 24, 1994, Tr. p. 3,560].
- Fourteen percent of the people gambling in Nevada are foreign visitors. They do not have to come to Nevada. A smoking ban would encourage them to patronize competitors not subject to a smoking ban. [Wayne Edward Mehl, Nevada Resort Association, October 24, 1994, Tr. p. 3,559-3,560].

- Smoking bans would decrease tourism, the number one industry in San Francisco. [Robert "Bob" Jacobs, San Francisco Hotel Association, October 24, 1994, Tr. p. 3,730-3,731, 3,732].
- Foreign visitors will forego travel to the United States and go to other countries where they don't have similar smoking restrictions. [Carmen Delayncera, Owner of a travel agency, March 31, 1995, Tr. p. 15,079].
- A honeymoon couple cancelled their vacation to the U.S. because of smoking bans and instead went to Cancun. [Carmen Delayncera, travel agency, March 13, 1995, Tr. p. 15,085-15,086].
- If you ban smoking as is proposed across our country, you will seriously and definitely impact travel to and within the United States. People will not travel to, let alone spend thousands of hard earned dollars on a trip to a place where they are not welcomed, or effectively discriminated against. Last year L.A. (Los Angeles) passed a 100 percent smoking ban. Immediately, the City lost the National Association of Convenience Store Operators Convention, and \$10 million in projected revenues to Chicago, where there is not a total ban smoking. If you ban smoking in the United States, American companies may decide to book their conventions in competing destinations like Nassau, Montreal, Vancouver, or Acapulco. Likewise, foreign and international travelers will stay abroad where they're welcome and accommodated. [Jim Gatherum, Travel Unlimited, February 14, 1994, Tr. pp. 8,957-8,958].
- I have noticed that foreign visitors prefer smoking accommodations. When we prepare for conventions and meetings with high attendance from overseas, we make the necessary changes in order to accommodate their requests. Primarily, that's economic reasons. [Michael Whipple, Sheraton Inner Harbor Hotel, December 14, 1994, Tr. p. 9,057].
- The proposed smoking regulations will put us in a very difficult competitive position in the world travel and meetings market. It will make us non-competitive, and give folks that plan meetings and conventions no alternative but to take their business elsewhere. I can think of one international destination that I've worked at, in Toronto, that I would love to hear of such a move on our behalf. [Michael Whipple, Sheraton Inner Harbor Hotel, December 14, 1994, Tr. p. 9,058].
- Vermont is heavily dependent on tourism from Canada and other countries. These tourists want to have their smoking habits

accommodated. OSHA's proposed rule would cause problems and economic burdens for the tourist industry. [William Gillam, Jr., Vermont Business Coalition, January 20, 1995, Tr. p. 12,373-12,375].

- Some European tourists have indicated they will not visit Vermont if they cannot smoke. [William Gillam, Jr., Vermont Business Coalition, January 20, 1995, Tr. p. 12,388-12,389].
- OSHA's proposed rule will effectively ban smoking in hotels, bars and restaurants. This will have a devastating impact on the tourism and hospitality industries. Foreign visitors will not deal with such smoking restrictions. Foreigners have too many other places for touring they can choose from, and they are not about to give up smoking to go anywhere. [Joe King, American Sight Seeing International, January 13, 1995, Tr. p. 11,332-11,336].
- OSHA's proposed ETS rule would hurt tourism. Utah is a popular destination for international tourists, particularly Japanese and Germans. A large percentage of these tourists smoke. OSHA's rule would prompt them to seek other more accommodating locations and send a message to the tourists that they are unwelcome in our country. [Senator Mike Dmitrich, State Senator from Utah, January 9, 1995, Tr. p. 10,421].
- OSHA's proposed rule is a virtual smoking ban in working places, including restaurants, bars, casinos, bingo halls, hotels, offices, etc. A national ban on smoking would substantially hurt the tourism industry. One convention of convenient store operators had planned to hold their convention in Los Angeles. They moved the convention to Chicago because they did not like the smoking restrictions Los Angeles had passed. This one event cost Los Angeles 12,000 visitors, 40,000 room nights, and \$10M in lost revenue. Seventy percent of Japanese men smoke, and they smoke two to three packs a day. Four point eight million Japanese visit southern California each year. Tourists from other countries also visit. They will tour other countries if smoking is banned. [Greg Shank, Tour Connection and Charters, January 9, 1995, Tr. p. 10,436-10,445].
- Foreign tourists, particularly the French, probably would disobey smoking bans in the U.S. If smoking is banned in hotel rooms, ash trays would be taken out of the rooms and other places. The foreign visitors in those hotel rooms will smoke anyway. [Joan Rutger, Ravenia Court Travel, January 9, 1995, Tr. p. 10,451, 10,458-10,460].

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Appendix 4-H

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Testimony

- If I had one section where people could smoke, for a 24-hour, 7-day a week operation with hundreds of people coming through, I would have to tell smokers this is the only place you can smoke but you can only smoke at certain times because I have to have people service that area and that would be kind of crazy. You can only smoke here and you can only smoke at certain times because you can't smoke in there anytime you want to because I have to have people come in and clean it. [Joe Callahan, Motel Sleepers, February 3, 1995, Tr. pp. 13,346-13,347].
- I'd have to tell customers that even though this is your room, you pay rent for it, that you're not going to be allowed to smoke in your room anymore, they will find other accommodations. I know at least 15 of my customers will go in a heartbeat. If people couldn't come in and smoke, they would eat more at home. If they couldn't smoke in a bar, they would drink more at home. Regarding a separately ventilated smoking room, it would be something that my customers would not like. [Joe Callahan, Motel Sleepers, February 3, 1995, Tr. p. 13,347-13,348, 13,352, 13,357-13,357].

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Appendix 5

OSHA Should Analyze The Impact of The Proposed Rule On Tobacco-Related Industries And Communities

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Letter of Rose M. Gaul to Mayor Tony Intintoli and City Council, Vallejo, CA, re: smoking ordinance, February 25, 1994 (Philip Morris, Ex. 416-266)

Testimony

- My company is located in western Kentucky, the cradle of the Burley and the dark fired tobacco market. At least 40% to 50% of the company's potential customers are tobacco farmers or people whose income comes from tobacco. When the tobacco farmers are hurt economically, the company, which depends on the farmers for their main source of revenue, also is hurt economically. [Jerry Stewart, Stewart's Truck Equipment, Inc., February 10, 1995, Tr. p. 13,855-13,856].
- In the Tobacco Warehouse Auction System, USDA sets time limits upon which the tobacco can be sold. Therefore, to allow any one of the tobacco buyers or a USDA grader to stop and go in a separate room to smoke, the operation would shut down. [Owen Pass, Lawn & Garden Store, Tobacco Warehouse, Jewelry Store, March 2, 1995, Tr. p. 14,498]

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Appendix 6

OSHA Fails To Evaluate The Severe Economic Impact of Its Proposed Rule On Sales-Service Industries

Literature

Transcript, Hearings on Proposed Rulemaking Before the State of Maryland Division of Labor and Industry re: Prohibition of Smoking in an Enclosed Workplace, Case No. 94-110-P, May 3, 1994, Catonsville, Maryland (Philip Morris, Ex. 416-206)

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Notice of violation sent to owner of Wordmasters Custom Data Services, Sacramento, California, from Dennis J. Kubo, Acting Code Enforcement Manager, February 23, 1995. (Philip Morris, Ex. 416-436)

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National Smokers Alliance Protests Louisville Mall Smoking Ban, Associated Press, February 27, 1995 (Philip Morris, Ex. 416-462)

Local Funeral Home May Suffer Under OSHA Rule, Rebecca S. Weiner, Gannett News Service, February 3, 1995 (Philip Morris, Ex. 416-469)

Testimony

- If this proposed regulation goes into effect, I would be put out of business and my dream of owning and running my own company would be destroyed, because I would have to ban smoking or build a designated smoking area in my own home, and I feel I should not have to do either. [Donna Thompson, Employment Research Services, November 1, 1994, Tr. p. 4,786].
- My policy for clean air and smoking is our clients and customers come first. If our client doesn't smoke, we don't smoke. If our client smokes, we can smoke. Even if I could afford to build a smoking room, it would not work in my particular situation. Our smoking clients are making big decisions and they need to be able to smoke to relieve some of the pressure that comes with deciding what property to buy. If our client lights up a cigarette and I tell them they can't, they will pick up their cigarette, put it out, and put their checkbook in their pocket and walk out. And my office will lose several thousand dollars. If my smoking clients come in and cannot smoke, they will leave and buy the real estate from the owner directly. I would be forced to close my business. [Marge Dahlquist, Dahlquist Realty, February 21, 1995, Tr. pp. 14,011-14,014].
- Because of the lengthy process of taking a farm loan application -- I feel like if we had to ask somebody to go outside that would be very discourteous, that it would alienate many of our customers [Stan Carver, Southeast Georgia Farm Credit, February 9, 1995, Tr. p. 13,777].
- Some customers making large purchases such as a \$20,000 to \$30,000 trailer desire to smoke during the sales negotiations. The company would lose customers if it had to tell them they could not smoke during the negotiations but would have to go to another room to smoke. Fifty to sixty percent of the company's customers smoke. If the company banned smoking in the facility, it would lose these customers, especially when the business is dependent on money from tobacco farming. [Jerry Stewart, Stewart's Truck Equipment, Inc., February 10, 1995, Tr. p. 13,857-13,860].
- I could not very well tell a customer when he is coming in and spending between \$20,000 and \$25,000 for a new car not to smoke. That wouldn't be very good business practice, especially where there are 60 or 70 other car dealerships that they could go frequent besides Dearduff. Due to the small

population in the area, customer loyalty is very important to Dearduff. Without customer loyalty, they would be spending all of their time gaining new customers instead of satisfying the ones they had, and it's a lot cheaper to keep a customer satisfied than it is to go out and find a new customer. By requiring a smoking customer to put out a cigarette, this would affect the satisfaction rating which is generally given by the manufacturer to all car dealerships. Currently, Dearduff's satisfaction rating is 100%. The satisfaction rating is also used as an advertising tool to help bring in customers through presenting to them the performance scale of the dealership. Even if all dealerships impose the same no smoking rules for their customers as set out by the Rule, it could still be a problem because customers have alternative methods of purchasing cars instead of going through a dealership. They can buy the car from auto brokers, use care dealerships, or private sales. [Justin Dearduff, Dearduff Chevrolet/Pontiac, January 31, 1995, Tr. pp. 12,994-12,995; 13,004; 13,008].

- In sales, there is a communication process. Any time you break up the communication process, you can break the sale. In sum, if I send customers out to smoke at a very stressful time, they might not come back in, they might just get in the car and keep going. [Sandra McCafferty, Real Estate Agent and Broker, February 6, 1995, Tr. p. 13,421].
- Our salesman has been working with a customer for maybe two or three months. This customer is going to buy a vehicle. We don't know where or who from but we know he is going to buy. Sure enough, he and his wife come in one afternoon, finally in the closing booth about to make that final buyer decision, and here she reaches in her pocket or her purse, whichever the case may be, for a cigarette. Am I supposed to tell my salesman at that crucial point and time that they must tell the customer to go outside or to go into a designated smoking room to smoke. At that crucial time, I don't think so. I think if I caught a salesman doing that, he would probably be looking for another job the next week. [Pete Tilghman, Jr., Tilghman Chevrolet, February 6, 1995, Tr. p. 13,498]
- I would find it difficult to force a client to stop smoking and so would our staff. The clients are very courteous but quite independent when it comes to being told they can't do something. Female customers might schedule less frequent hair appointments if they are not comfortable with the smoke-free environment that the proposed standard would require. [Rita Underwood, Hair Now, November 1, 1994, Tr. pp. 4,815; 4,821-4,822].

- Customers come in to be pampered and it would greatly harm my business if they were told they could not smoke. [Kathy Kinsey, Kathy's Hair Care Center, March 3, 1995, Tr. p. 14,573].
- If I were forced to ban smoking in my building, it would insult the many customers who enjoy the ability to relax and feel at home in my store. It would likely cause me to lose valued employees who also enjoy this freedom. [Phil Howell, Retail Motorcycle Business, February 9, 1995, Tr. p. 13,810].
- Requiring customers to abstain from smoking would certainly alienate many of our best customers and would certainly result in lost sales. [Trent Burroughs, AGR Industrial Supply Company, Burroughs Repair Company, February 9, 1995, Tr. p. 13,825].
- If I told someone that was coming in to buy a tobacco harvester shaft, or a tire, or a wheel that you're going to have to go outside to smoke, he would just drive down the road and buy it from somebody else. [Trent Burroughs, AGR Industrial Supply Company, Burroughs Repair Company, February 9, 1995, Tr. pp. 13,830-13,831].
- I also believe some of my customers would feel offended if I would either ask them to go outside or to go to a separate room [Darrell Lauer, Auto Repair Shop, February 7, 1995, Tr. p. 13,591].
- Imposing a smoking ban will upset the flow of obtaining this type of rapport with my customers. I'll have to stop everything I've been trying to accomplish and tell him he has to leave the room to go smoke that cigarette. I think this is going to irritate my customers because they think they've been singled out and they will leave my business. [George Chemacki, P & K Auto Body Repair, Inc., P & K RV Sales, February 7, 1995, Tr. p. 13,637-13,638].
- The proposed rule would force my employees probably to smoke outside as well as my customers. About 40% of my customers smoke. Some of the company's customers have to wait in the facility for a few hours while their vehicle is being repaired. The customers would resent it if they were told they had to go outside to smoke. [Warren Wild, McBride's, Inc., February 10, 1995, Tr. p. 13,843; 13,851-13,852].

- How comfortable would it be to ask a Ford Motor executive (i.e., the company's customer) to step outside with his cigarettes, especially in the uncomfortable weather they have in Michigan? [Karol Brown, Point to Point, Inc., February 10, 1995, Tr. p. 13,871-13,872].
- It would hurt business to tell customers and potential customers not to smoke while visiting the company for meetings or to review the operation. [Mel Parsell, National Tech Systems, November 1, 1994, Tr. p. 4,804-4,805].
- Many of his customers are very independent, anti-government, and anti-regulation. He would risk losing their business to a competitor not complying with the proposed rule if he were to tell them they could not smoke in his facility. [Kevin Sandberg, Sandberg Implement Co., February 21, 1995, Tr. p. 13,981].
- It would be very hard for us to tell a customer that we can't deal with you if you're smoking a cigarette. We serve a four county area, and I'd say our population area is about 3,500 people or less, so our customers are really important to us. [Bob Mendenhall, Owner, Juanita Champion Auto Parts Store and Imperial NAPA, February 3, 1995, Tr. p. 13,299].
- We are a small business and we are struggling, like I said, our profit margins are low and we just can't afford to alienate customers by asking them not to smoke in our place of business or telling them to leave if they refuse to put out a cigarette. I feel that it would cost us business and we can't afford to lose customers, not even one customer. If I asked a customer to stop smoking, I would expect him to turn around and walk out probably. I mean that's what I would expect, that's what I would do. [Margie Ronson Music City Auto Care Products, February 3, 1995, Tr. pp. 13,314; 13,317].
- It is not unusual to see a 20-year customer chewing tobacco and smoking a cigarette while telling me he'll pay his account when he sells his tobacco. How do I tell this man he cannot smoke in our store? I imagine our Mom and Pop type image would be destroyed and he would promptly go to the competitor. The majority of our relationship, with the customers comes in them standing around in the morning, the contractors talking, smoking their cigarettes and drinking coffee and discussing what to do and what projects they can work on. We will also discuss how we can help them. I feel that we would lose that familiar warm environment that we have, that people come to Builders Supply for, if we had to ban smoking. We work closely with our contractors, helping them with bids, and we

help them out so that they will keep coming back. Telling one of these contractors they could not smoke I think would definitely offend them. [Lee Saufley, Builders Supply Window Company & Hardware Store, February 2, 1994, Tr. p. 13,215, 13,227, 13,231-13,232].

- What do you do if a customer walks into a non-smoking area, my showroom or something like that with a cigarette? Well, the first thing I do is get them an ashtray [Vinje Dahl, Ford Car Dealer, February 8, 1995, Tr. p. 13,667].
- If my customers are not allowed to smoke, they are not going to use my transportation. [Brian Anthony Duenaz, Mexican Food Restaurant Limousine Company, February 8, 1995, Tr. p. 13,712]
- Our relationship with customers is extremely important. The rule would completely undermine my ability to sell anything. If I have any potential customers, I need them. [Joe Christiansen, John Deere Dealerships, February 8, 1995, Tr. p. 13,779].
- Some smoking customers come to my office, and I would not want to tell the customers to put their cigarette out or go outside to smoke. In business, you always try to get in the good graces of the customer. I visit my customers, other companies, on a daily basis. Some of the customers' employees smoke in front of me. I do not want to have to tell my customers, when I am in their facilities, that I will refuse to speak with them until they put their cigarette out. [Robert Collison, Kendall-Collison, Inc., February 21, 1995, Tr. pp. 14,000-14,001]
- If I have to tell a customer to put out a cigarette in my facility, I am going to lose business. [Alfredo Ramirez, Denny's Appliance, January 30, 1995, Tr. p. 12,877].
- This rule also poses a problem for me in particular because when people come into my office smoking, I would have to ask them to put their cigarette out or ask them to step outside until they finish it. That poses a problem in that a lot of people would take that as an insult and would be offended by it. [J. Paige DuBois, Young & Associates, February 6, 1995, Tr. p. 13,440].
- Telling a customer to put out a cigarette or to leave the premises would hurt my business. I think it would hurt me quite a bit. It would hurt the customers' feelings. Most of my customers feel like I am their friend, and if I have to tell them "hey you can't smoke in my building," they'd take it

personally. [Moody Hughes, Pick-up Truck Accessories, February 6, 1995, Tr. p. 13,521].

- A local grocery store put up a no smoking sign and most of the farmers went to the grocery store manager and said either the sign comes down or they would take their business elsewhere. [Owen Pass, Lawn & Garden Shop, Tobacco Warehouse, and a Jewelry Store, March 2, 1995, Tr. p. 14,497].
- Segregating smoking customers to a separate room while they smoke or banishing them outside would have a negative impact on the customer's thoughts regarding their business. [David Hicks David's Automotive, March 3, 1995, Tr. p. 14,537].
- I would likely lose customers in the insurance agency if they were asked not to smoke. [Gaines Grantham, Owner and Operator of a video rental store and a general insurance agency, March 13, 1995, Tr. p. 15,023].
- It would be quite awkward for my company to monitor customers as to whether or not they were smoking in the facility. I do not want to ruin any type of relationship I have established with my customers. [Kevin Corrigan, Summit National Bank, December 5, 1994, Tr. p. 8,189].
- Some customers come to watch testing that is done on the customer's material. As these tests determine whether various expensive machine parts (e.g., \$50,000 to \$75,000 parts) are acceptable for shipment or will pass inspection, the customers are quite intense during the testing. It would be a great imposition on the company and the customers if the company had to tell the customers they had to leave the building or go to a special room to smoke during these intense testing situations. [Kenneth Webb, Webb Industries, February 10, 1995, Tr. p. 13,891].
- We have customers that visit us frequently to tour our facilities and if I had a customer come in and we were sitting in the office talking and he lights up a cigarette what do I do, tell him you have to go in the other room? [Edward Slaven, Philadelphia Flatware, February 8, 1995, Tr. p. 13,654].

- If the proposed regulations were to be implemented, customers would spend less time at the shop, perhaps for less services, and learn how to do such services themselves where they can enjoy smoking in the comfort of their own home. [Jill Evangelista, Touch of Class, January 30, 1995, Tr. p. 12,900].
- Telling customers they could not smoke in our dealership would make it difficult to keep customers from going to bigger car dealerships. If we didn't put the addition on, we would no doubt lose a good percentage of our smoking customers to our competitors ... [Matthew Swanson, Brengie Sales & Service, February 2, 1995, Tr. p. 13,196-13,197].
- During gun shows my husband and I coordinate, the shows that allow smoking generally tend to attract a larger crowd. I have lost dealers in the shows where smoking is prohibited because such dealers refuse to attend any more shows unless they can smoke. If this trend catches on so that other dealers also decide not to attend then there will not be a gun show. Since the gun shows are held in the Civic Center which is a building that I lease the space to hold the shows, it would be impossible for me to build a smoking room with separate ventilation. Smoking would have to be banned. [Donnie Presutti, Gator Gun and Knife Sotre, January 31, 1995, Tr. p. 13,017-13,019].
- I would likely lose some customers if they were told they could not smoke. [Amanda Nedlose, The Shooter Shop, March 3, 1995, Tr. pp. 14,620-14,621].
- People do not like to purchase insurance so it's important that we make the person feel comfortable so that they will stay longer so that we can uncover more needs [Lin Boyd, Independent Insurance Agent, February 7, 1995, Tr. p. 13,572, 13,584].

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Appendix 7

OSHA Did Not Account For Any Significant
Adverse Economic Consequences on
Governmental Entities

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Appendix 7-A

OSHA's Proposed Rule Is Neither Reasonable Nor Feasible Because It Requires Increased Expenditures for Governmental Entities

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Controversy Swirls on Smoking Ban Law, Grace Ann Walden, San Francisco Chronicle, January 18, 1995 (Philip Morris, Ex. 416-18)

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- Based on my experience, I believe I can honestly say that no law enforcement agency that I know of has adequate personnel to enforce the proposed smoking regulations. Therefore, I sincerely doubt that OSHA does. [Jim Gatherum, Travel Unlimited, December 14, 1994, Tr. p. 8,958-8,959].
- OSHA itself would have to add more employees to police this proposed regulation at a time when we need less government. [Jerry Walls, President, Lookout Valley Tool & Machine, February 7, 1995, Tr. p. 13,598].
- One fact that is indisputable is that this new regulation will cost more money, not only for business, but also for government to implement. [Norman Dresser, Vice President of Dresco Belting Co., November 1, 1994, Tr. p. 4,753].
- The government can go broke in trying to accomplish the impossible task of a risk-free work environment. [Norman Dresser, November 1, 1994, Tr. p. 4,754].
- The State of Nevada has already addressed the issue of smoking in many areas, including schools, day care centers, buses and other public transportation, and other public places. [Leonard V. Nevin, Nevada State Senator of Washue County, November 30, 1994, Tr. pp. 7,945-7,947].
- ETS already is regulated by many state and local ordinances. If OSHA regulates ETS, OSHA's very small staff and limited resources would be diverted away from other serious safety and health problems that OSHA needs to deal with. OSHA does not have the money or staff to deal with the most serious of workplace problems over which no one else has jurisdiction and which no other federal or state agency is addressing. [Margaret Seminario and Rex Tingle, Department of Occupational Safety and Health for the AFL-CIO, January 20, 1995, Tr. p. 12,218-12,219].
- A national smoking ban, like Prohibition, will be difficult to enforce. [Robert "Bob" Jacobs, San Francisco Hotel Association, October 24, 1994, Tr. p. 3,731-3,732].

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Appendix 7-B

OSHA's Proposed Rule is Unreasonable Because It Significantly Reduces Governmental Revenues

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Smokers Get Hot Under Collar, The Sacramento Bee, September 12, 1994 (Philip Morris, Ex. 416-681)

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Testimony

- Forty-four percent of our state operating budget, our general fund, comes directly from gaming levies, taxes on gaming. Indirectly, another 23 percent of the budget, so 60+ percent of your budget, comes directly and indirectly from gaming. The local government component paid completely by gaming is approximately 25 percent. [Samuel P. McMullen and Amy Halley, McMullen Strategic Group, November 30, 1994, Tr. p. 7,884].
- Banning smoking in restaurants will result in lost jobs and a decrease in tax revenue. [W. W. Naylor, owns Naylor Restaurant, October 24, 1994, Tr. p. 3,638-3,639].
- Based on a study by the National Restaurant Association, the impact of the proposed rule on business would vary by industry segment. Bars and taverns would experience a 48.1 percent drop in sales or a loss of \$4.8 billion. This would lead to a corresponding reduction in sales tax revenues, which is estimated at \$913 million across the country. [William P.

Fisher, W.W. Naylor, James Britt, National Restaurant Association, October 24, 1994, Tr. p. 3,645].

- In 1993, a proposed bill went into effect in Vermont which provides smoking is not allowed in most public places. Vermont's hospitality industry provides much revenue for Vermont in taxes. Vermont's smoking ban in public places will hurt the hospitality industry due to the international markets Vermont competes with. [William Gillam, Jr., Vermont Business Coalition, January 20, 1995, Tr. p. 12,371].
- Based on our survey, we estimate the weighted average percentage change in travel by foreign visitors to the U.S. if the proposed rule were implemented would be a decrease of 6.8 percent. We translated the affects of decreases in the frequency of foreign travel to the U.S. into economic terms based on data compiled by the U.S. Department of Commerce's U.S. Travel and Tourism Administration or USTTA. A 6.8 percent decrease in foreign travel expenditures would represent an annual reduction of \$3.9 billion in expenditures by foreign visitors in the U.S. and a reduction of \$987 million in payroll, \$525 million in tax revenue and 61.8 thousand jobs. [Glen Galfond and Jay Tansing, Price-Waterhouse, October 25, 1994, Tr. pp. 3,916-3,918].
- I wonder if you are also aware of the fact that, in Nevada, 63 percent of the work force is either directly or indirectly dependent on gaming or gambling or casinos. The gross gaming revenues in the State of Nevada averages over \$500 million in one month. The proposed standards would require, in my estimation, a total ban on smoking in casinos. It has been stated in numerous reports that we have conducted, and United States Senator Harry recently stated that 30 percent of the workforce and revenues would be lost if we had to ban smoking in casinos. This would be devastating to the State of Nevada. [Senator Schaeffer, in Questions Posed to Dr. Niemeier, NIOSH, September 28, 1994, Tr. pp. 1,849-1,850]

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Appendix 8

OSHA's Small Business Analysis Was
Inadequate

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Appendix 8-A

Small Businesses are Critical to the U.S. Economy, And OSHA's Analysis Was Inadequate

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Testimony

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Appendix 9

The Inflexible Proposed Rule Is
Unrealistic for Already Over-
Regulated Small Businesses

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Appendix 9-A

Small Businesses Are Already Excessively Regulated

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Smoking Ordinance Cannot Be Enforced, Letter to Editor, September 6, 1993 (Philip Morris, Ex. 427-15)

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Testimony

- I spoke with many of my customers and friends. Without exception, all of them (even the nonsmokers) did not believe the proposed rule was something the federal government should be doing. Most people right now are getting very cynical of government. They are regulated in many ways. And, they see this as another intrusion into their private life or private business lives. [Robert Collison, Kendall-Collison, Inc., February 21, 1995, Tr. p. 14,001].
- Restaurants already have to comply with a host of local state health codes, ventilation requirements, and safety standards. The restaurant industry is highly regulated. Restaurants do not need additional regulation. [W. W. Naylor, owns Naylor Restaurant, October 24, 1994, Tr. p. 3,634-3,635].

- My profit margin is very low, like most other restaurateurs. I cannot afford to make changes. Changes could make me go out of business. I have a small government loan from the Small Business Association, and do not want to default on the loan. [Eddy Giel, University Place Restaurant, October 24, 1994, Tr. p. 3,545, 3,550].

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Appendix 9-B

Small Businesses Have Already Addressed Workplace Smoking Issues

Literature

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New York Forum About Cigarettes; Table That Smoking Ban, Cathy Young, *Newsday*, June 16, 1994 (Philip Morris, Ex. 416-120)

The Cigarette's Open Frontier, New York Times, May 15, 1995, p. 4 of 5 (Philip Morris, Ex. 416-121)

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Transcript, in the matter of: Prohibiting Smoking in the Workplace, hearing, December 16, 1993 (Philip Morris, Ex. 416-205)

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The Sign of the Times, July 1995 issue (Philip Morris, Ex. 416-302)

Summary of and Testimony Regarding the Voluntary Protection Programs, June 21, 1995, to Senate Committee on Labor and Human Resources, by James C. Andrews, Jr., Safety and Loss Prevention Director, Dow Chemical Co., on behalf of Voluntary Protection Programs Participants' Association. (Philip Morris, Ex. 416-337)

Oklahoma Restaurateur Works to Accommodate Smoking Preferences, Customer Service Program Vital Tool in Facing Proposed Restrictions, MidSouthwest Restaurant, November/December 1994 (Philip Morris, Ex. 416-403)

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Testimony

- Due to the lack of ventilation and the stuffiness in the basement environment of the company, an area in the lunch room was set aside for cigarette breaks. This room is equipped with a telephone and has plenty of counter space so the employees can work while taking a cigarette break. The room has a room-size air purifier. The company resolved its problem on its own. [Karol Brown, Point to Point, Inc., February 10, 1995, Tr. p. 13,870].
- The employees in our office are content with the way that we have worked out our own smoking problem and many wonder why we would need government regulations to complicate the answer that we've already found. [Karol Brown, Point to Point, Inc., February 10, 1995, Tr. p. 13,872].
- I just don't see that government needs to be imposing indoor air qualities on businesses that have worked out a system that works for their people and their customers. [William McCarty, President and Chief Executive Officer of McCarty Hull Inc., November 1, 1994, Tr. p. 4,840].
- The results from a survey indicated that the company's accommodation policy was strongly supported by the employees. [William McCarty, President and Chief Executive Officer of McCarty Hull Inc., November 1, 1994, Tr. p. 4,830].
- Super Pumper has strict written policies covering where employees can and cannot smoke. While the store offices are not designed with negative pressure, there have been no complaints at any of our stores about smoking. [Vern Lysford, Super Pumper, Inc., February 3, 1995, Tr. p. 13,268].
- I have designated smoking areas for the bartender, kitchen help, waitresses and waiters away from all food preparation areas. I have been doing this for 20 years. I did not wait for anybody to tell me to do it, but did it on my own. [Peter Karangelen, Kent Lounge, February 3, 1995, Tr. p. 13,324].

- Cactus Jack's customers, through a customer advisory board, established a smoking policy for the club. [Steve Browne, Owner, Cactus Jack's Casino, February 2, 1995, Tr. p. 13,173].
- Brengie Sales maintains a smoking policy based on being polite. Employees don't smoke around a customer that doesn't appreciate it. Employees never smoke in a customer's car. [Matthew Swanson, Brengie Sales & Service, February 2, 1995, Tr. p. 13,199].
- Most businesses already have established policies regarding smoking in the workplace which work. Most people with simple common courtesy and common sense generally handle the situation adequately. A federal mandate is not needed in the private sector. [Tim Urban, Sioux Empire Hobbies, Inc., February 21, 1995, Tr. p. 13,993].
- My restaurant has smoking and nonsmoking sections, separated with a 6' high partition. There is good air ventilation. My restaurant customers like the choice and freedom of smoking and nonsmoking. [Eddy Giel, University Place Restaurant, October 24, 1994, Tr. p. 3,545].
- In eight years, I have never once had a complaint from any of my tenants. They have worked it out themselves. [Gordon Bryan, Diamond Steam Cleaning, February 6, 1995, Tr. p. 13,414].
- What I am saying here is that it is up to the people, and the people I deal with, which are a number of different businesses, have resolved this issue, and we don't need a ruling to resolve it. [Gordon Bryan, Diamond Steam Cleaning, February 6, 1995, Tr. p. 13,407].
- We currently have approximately 75 percent of our rooms as non-smoking rooms, and this percentage has changed continuously over the nine-year history of the hotel. It continues to evolve, and will in the future. It works. And it's continued to work for this hotel. Additional regulations are not needed and will take away the flexibility we need in order to accommodate our customers and be successful. [Michael Whipple, Sheraton Inner Harbor Hotel, December 14, 1994, Tr. p. 9,056-9,057].
- Government rules and regulations are impinging on individuals' freedoms. I should have the freedom to devise my own smoking policy which would accommodate both smokers and nonsmokers. [Marge Dahlquist, Dahlquist Realty, February 21, 1995, Tr. p. 14,014-14,015].

- Winter Bell Company is a manufacturer of various packaging materials. If we were required to build a separate free-standing room enclosed with outside ventilation, it would go against the grain of the team concept which has taken years to develop at the company. By requiring smokers to go into a separate smoking room to smoke, you are segregating the smoking employees from the nonsmoking employees and that is not good for the team concept. Management has already worked out an agreement between smokers and nonsmokers, being especially sensitive to freedom of choice. [Rick Lewis, Winter Bell Company, February 1, 1995, Tr. pp. 13,152-13,153].